

Regional Counsel Opinion No. 167
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

R. L. O'CONNELL, Director
Enforcement Division

392

September 29, 1973

CASSANDRA DUNN, Regional Counsel

Review of Public Health Regulations, Department of Health,
State of Hawaii, Chapter 37 Final Draft August 16, 1973
and Chapter 37-A, Final Draft August 16, 1973.

We have compared Chapter 37 Draft of August 16, 1973 with the
material previously contained in Chapter 45 and observed
changes in the following provisions:

1(a)(2), 1(d)(2), 1(u), 1(v), 1(x), 1(y),
2, 3, 4(e)(2), 14(b)(3), 15(a)(1), 21(a)(1)(iii),
30(a), and 36.

In our previous evaluations of Hawaiian authority (June 7,
1973 and July 24, 1973) the effect of Chapter 37-A was not
considered. We herein consider the effect which the August
16, 1973 drafts of Chapters 37 and 37-A have on our prior
evaluations of Hawaii's authority.

The entry numbers contained below refer to the entries
contained in our earliest evaluation.

Entry No. 1: Previous conclusions basically unchanged.

Entry No. 2: Previous conclusions basically unchanged.

Entry No. 3: Previous conclusions basically unchanged.
Regarding the questionable nature of specific
authority for Section 403 see the letter to
Nelson Chang from Cassandra Dunn dated September
28, 1973. Note that Chapter 37, Section 15(a)(1)
differs from the corresponding provision in
Chapter 45 thusly:

Chapter 45: "The Director shall approve an
NPDES application for a NPDES permit if . . .
(a) the existing treatment works or waste out-
let is designed, built, and equipped in accord-
ance with the best practicable control technology
so as to eliminate or reduce wastes to a minimum."
(emphasis added)

Chapter 37: The underlined words above, "eliminate or" are deleted.

The elimination of wastes discharge is the national goal of the FWPCA 1972 (Sec. 101(a) (1)). It would seem that if best practicable control technology could eliminate wastes, it would be required to do so. We hope that the deletion of "eliminate" does not reflect an attitude which would not require the elimination of wastes if such is a result of the best practicable control. =

- Entry No. 4: Previous conclusions basically unchanged.
- Entry No. 5: Previous conclusions basically unchanged.
- Entry No. 6: Previous conclusions basically unchanged.
- Entry No. 7: Previous conclusions basically unchanged.
- Entry No. 8: Previous conclusions basically unchanged.
- Entry No. 9: Previous conclusions basically unchanged.
- Entry No. 10: Previous conclusions basically unchanged. See letter from Cassandra Dunn to Nelson Chang dated September 28, 1973.
- Entry No. 11: Previous conclusions basically unchanged.
- Entry No. 12: Previous conclusions basically unchanged.
- Entry No. 13: Previous conclusions basically unchanged.
- Entry No. 14: Previous conclusions basically unchanged.
- Entry No. 15: Previous conclusions basically unchanged.
- Entry No. 16: Previous conclusions basically unchanged.
- Entry No. 17: Previous conclusions basically unchanged.
- Entry No. 18: Previous conclusions basically unchanged.
- Entry No. 19: Previous conclusions basically unchanged.
- Entry No. 20: Previous conclusions basically unchanged.
- Entry No. 21: Previous conclusions basically unchanged.

- Entry No. 22: Previous conclusions basically unchanged.
- Entry No. 23: Previous conclusions basically unchanged.
- Entry No. 24: Previous conclusions basically unchanged.
- Entry No. 25: Previous conclusions basically unchanged.
- Entry No. 26: Previous conclusions basically unchanged.
- Entry No. 27: Previous conclusions basically unchanged.
Regarding the authority to meet the requirements of 40 CFR 124.73(f) and (g) see the letter from Cassandra Dunn to Nelson Chang dated September 23, 1973.
- Entry No. 28: Previous conclusions basically unchanged.
- Entry No. 29: Previous conclusions basically unchanged.
- Entry No. 30: Previous conclusions basically unchanged.
- Entry No. 31: Previous conclusions basically unchanged.
See the letter from Cassandra Dunn to Nelson Chang dated September 28, 1973.
- Entry No. 32: Previous conclusions basically unchanged.
- Entry No. 33: See the letter from Cassandra Dunn to Nelson Chang dated September 29, 1973.
Previous conclusions basically unchanged.

/s/ Cassandra Dunn

CASSANDRA DUNN

Encl:

Letter from C. Dunn to N. Chang
dated September 23, 1973

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